COURT NO. 2

THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

(1)Appeal from Order No. 262 of 2003

New India Assurance Co. Ltd. …. **Appellant.**

Versus

Smt. Ishwari Devi
and others. ……**Respondents.**

(2)Appeal from Order No. 261 of 2003

New India Assurance Co. Ltd. …. **Appellant.**

Versus

Smt. Tulsi Devi
and others. ……**Respondents.**

And

(3)Appeal from Order No. 289 of 2003

New India Assurance Co. Ltd. …. **Appellant.**

Versus

Smt. Het Ram
and others. ……**Respondents.**

Coram: Hon'ble P.C.Verma, J.
Hon'ble B.S. Verma, J.

All these appeals arise out of the same motor accident and similar questions are involved for determination in these appeals, therefore, these appeals are being decided by this common judgment.

This appeal have been preferred under Section 173 of the Motor Vehicles Act, 1988, ***(in short the Act)*** against the judgment and Award dated 01-7-2003 passed in M.A.C. Petition No. 70 of 1999, Smt. Ishwari & others Vs. Smt. Munni Devi

& others, M.A.C. No. 71 of 1999 Smt. Tulsi Devi & others. Vs. Smt. Munni Devi & another and M.A.C. Petition No. 12 of 1999, Het Ram and others Vs. Smt. Munni Devi & another by Motor Accident Claims Tribunal/District Judge, Champawat (***(in short the Tribunal),*** whereby the learned Tribunal has allowed each of the claim petition and has awarded Rs.2,34,000/- as compensation along with interest @ 9% per annum, as mentioned in the impugned order, in favour of the claimant-respondent under Section 166 of the Act. Aggrieved, the Insurance Company- appellant has come up in appeal for setting aside the impugned judgment and award passed by the learned Tribunal mainly on the ground that there has been breach of policy conditions because the Truck involved in the accident was carrying, 30-35 passengers and that the Insurance Company is entitled to contest the claim under the provisions of Section 170 of the Act.

Brief fact of the case are that Gopal Datt Bhatt, Ramesh Chandra and and Laxmi Datt ***(the deceased)***, besides several persons, have sustained grievous injuries and consequently died in a motor accident, which occurred due to rash and negligent driving by the driver of Truck No. U.P. No. U.P.-1263 on 17-7-1998 on Pithoragarh- Tanakpur motor road. Hence the claim petitions have been field by the dependents/legal heirs of the deceased persons. The opposite parties contested the claim petition by filing their written statements. The O.P.No.2-appelalnt has inter alia pleaded that there was breach of policy conditions in the present case. The learned Tribunal has framed necessary Issues in the case. Ultimately, the Tribunal has come to the conclusion that the deceased persons have died as a result of injuries sustained by them due to rash and negligent driving by the driver of offending truck No. U.P. 03-1263. The Tribunal has also held that the Truck in question was not driven in violation of the policy conditions and that the Truck involved in the accident was duly insured with the Insurance Company-appellant. The learned Tribunal, ultimately,

awarded compensation in favour of the claimants, as mentioned in the impugned judgment and award.

We have heard learned counsel for the appellant-Insurance Company, Mr. Tanveer Alam Khan, as well as learned counsel for the claimant-respondents Smt. Pushpa Joshi and Sri M.C.Pande, Advocates, and have carefully gone through the entire material on record including the impugned judgment and award.

The learned counsel for the appellant has invited the attention of the Court to the news published in the news-paper "***Dainik Amar Ujala***" dated 19-7-1998, which shows that due fall of the truck in question in a ravine, seven persons had died and 13 persons were injured. In support of his contention, the learned counsel has made reference to the news-paper cutting annexed to these appeal and has submitted that this evidence has not been considered by the learned Tribunal in its judgment and award and the finding of the Tribunal on the point of breach of policy conditions is perverse. We do not agree with the submissions of the learned counsel for the simple reason that the news-paper cutting has got no evidentiary value, in view of the pronouncement of the Hon'ble Apex Court in the case of ***"State of Haryana and others Vs. Chaudhary Bhajan Lal and others" (AIR, 1993, Supreme Court, 1348).*** In that case, the Apex Court has held that newspaper report cannot be read as piece of evidence. Therefore, the Tribunal has not committed any illegality or infirmity in not relying upon the newspaper report.

So far as the argument of the learned counsel that the deceased were not authoriesed passengers in the Truck, therefore, the appellant company cannot be held liable for compensation is concerned, there is no evidence on the record that the deceased were traveling in the truck. The learned counsel then submitted that the F.I.R. has been lodged by the father of one Amba Datt Bhatt, which indicates that the deceased were passengers in the Truck involved in

the accident. We have carefully perused the F.I.R. and we find that in the F.I.R. itself, there is no disclosure regarding the fact that the deceased were traveling in the truck.

The learned Tribunal has recorded a categorical finding, on Issue No.1, on the basis of evidence on record that the deceased persons were going on the road on proper side and the truck driver hit and crushed them due to rash and negligent driving. There is no evidence to the contrary on the record to hold otherwise, so as to warrant interference with the findings of the learned Tribunal, therefore, the judgment and awards, under appeal, are liable to be confirmed.

Even otherwise the Insurance Company-appellant cannot challenge the findings on the point of rash and negligent driving and quantum of compensation. In the instant case, the learned counsel for the appellant could not show that permission under Section 170 of the Act was granted to the Insurance Company by the Tribunal to defend the case on all the grounds, available to the owner of the vehicle/insured. There is no finding of the Tribunal that there was collusion between the claimants and the owner of the vehicle and from the record is is evident that the Opposite Party/owner of the vehicle has contest the case and participated in the proceedings, therefore, it is not open to the appellant to challenge the findings on the point of rash and negligence and quantum of award. We are fortified in our view by the Apex Corut judgmtn the Case of ***"National Insurance Company Ltd. Chandigarh Vs. Nicolletta Rohtagi and others" [(2002) 7, Supreme Court Cases, 456].*** In that case, it has been observed by the Apex Court that ***"even if no appeal is preferred under Section 173 of 1998 Act by an insured against the award of a Tribunal, it is not permissible for an insurer to file an appeal questioning the quantum of compensation as well as findings as regard negligence or contributory negligence of the offending vehicle".*** Thus, in view of the law laid down by the Apex Court reported in ***(2002) 7, S.C.C. 456 supra),*** which is fully

applicable in the present appeal, none of the contentions raised on behalf of the appellant is tenable and has to be ignored outright.

No other point was urged or argued before us.

In the result, all the three appeals are devoid of merit and must fail.

The amount in deposit with this Court be remitted to the Motor. Accident Claims Tribunal concerned, for being paid to the claimants.

01-09-2004 **(B .S.Verma, J.) (P.C. Verma, J.)**
RCP